

Goudreau Corporation and Massachusetts Laborers' District Council a/w Laborers' International Union of North America, AFL-CIO. Case 1-CA-27825

April 27, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge filed by Massachusetts Laborers' District Council a/w Laborers' International Union of North America, AFL-CIO, the Union, on November 29, 1990, the General Counsel of the National Labor Relations Board issued a complaint on January 10, 1991, against Goudreau Corporation, the Respondent, alleging that it has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act. Thereafter, on January 23 and November 8, 1991, respectively, the Respondent filed an answer and an amended answer to the complaint.

On March 19, 1992, the General Counsel filed a Motion for Summary Judgment with the Board. On March 24, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The complaint alleges, inter alia, that as of May 9, 1990, the Respondent was in arrears on contractually required payments to benefit trust funds; that on about May 9, 1990, the Respondent executed a written agreement with the Union that Respondent would pay its current obligations to the fringe benefit funds under the extant contract on a timely basis and would discharge its arrearages in four installment payments between May 18, 1990, and August 18, 1990; that since about June 18, 1990, the Respondent has failed and refused to make any further payments towards the discharge of the aforementioned arrearages; and that these actions involve mandatory subjects for collective bargaining. In its amended answer to the complaint, the Respondent admits the above factual allegations, avers that it is unable to pay the balance owed, and denies that its conduct violated the Act.

We find that there are no factual issues warranting a hearing because the Respondent has admitted all relevant factual allegations. We further find that the Respondent's claim of inability to pay the ar-

rearages does not constitute a legal defense to the complaint's allegations that the Respondent's admitted conduct violated the Act.¹ Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Salem, Massachusetts, is engaged in general and marine construction and engineering. Annually, in the course and conduct of its business, the Respondent purchases and receives at its Salem facility products, goods, and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts, and provides services within the Commonwealth of Massachusetts valued in excess of \$50,000 to employers who are themselves directly engaged in interstate commerce, including Turner Construction Company. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Unit and the Union's Representative Status

The Union has executed a series of collective-bargaining agreements with Associated General Contractors of Massachusetts, Inc. and Building Trades Employers Association of Boston and Eastern Massachusetts, Inc., the most recent of which are effective for the period June 1, 1985, to May 31, 1988 (the 1985-1988 agreement), and June 1, 1988, to May 31, 1991 (the 1988-1991 agreement). On April 1, 1988, the Respondent executed an Acceptance of Agreements and Declaration of Trust with the Union by which it agreed to be bound by the 1985-1988 agreement and successor agreements, including the 1988-1991 agreement.

All employees of the Respondent in the classifications set forth in the 1988-1991 agreement, but excluding all other employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Since on about April 1, 1988, and at all times material herein, the Union has been the designated ex-

¹ See *Martin E. Keller Roofing Co.*, 297 NLRB No. 129, slip op. at 2-3 (Feb. 26, 1990), and cases cited there.

clusive collective bargaining representative, by virtue of Section 9(a) of the Act, of the employees in the unit, and its representative status has been recognized by the Respondent. Such recognition has been embodied in the aforementioned Acceptance of Agreements and Declaration of Trust.

III. THE UNFAIR LABOR PRACTICES

As of May 9, 1990, the Respondent was in arrears in its payments to the following fringe benefit funds set out by the 1988-1991 agreement: (i) health & welfare; (ii) pension; (iii) training trust fund; (iv) legal services fund; and (v) annuity fund. On or about May 9, 1990, the Respondent executed a written agreement with the Union that the Respondent would pay its current obligations to the benefit funds under the 1988-1991 agreement on a timely basis and would discharge the arrearages described above in four installment payments between May 18 and August 18, 1990. Since about June 18, 1990, the Respondent has failed and refused to make any further payments towards the discharge of the arrearages described above. The subjects set forth above relate to the wages, hours, and other terms and conditions of employment of the unit employees and are mandatory subjects for the purposes of collective bargaining.

By the acts and conduct described above, the Respondent has failed and refused, and is failing and refusing, to bargain collectively with the representative of its employees. The Respondent has thereby engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By failing and refusing, since about June 18, 1990, to make any further payments towards the discharge of arrearages in contractually required payments to the health & welfare fund, pension fund, training trust fund, legal services fund, and annuity fund, the Respondent has failed and refused, and is failing and refusing, to bargain collectively with the representative of its employees, and has thereby been engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to make whole its unit employees by making all further payments towards the discharge of arrearages in contractually required payments to the health & welfare fund,

pension fund, training trust fund, legal services fund, and annuity fund.² In addition, we shall order the Respondent to reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf'd. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Goudreau Corporation, Salem, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with Massachusetts Laborers' District Council a/w Laborers' International Union of North America, AFL-CIO, as the exclusive representative of the employees in the appropriate unit described below, by failing and refusing to make any further payments towards the discharge of arrearages in contractually required payments to the health & welfare fund, pension fund, training trust fund, legal services fund, and annuity fund:

All employees of Respondent in the classifications set forth in the 1988-1991 agreement, but excluding all other employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole its unit employees by making all further payments towards the discharge of arrearages in contractually required payments to the health & welfare fund, pension fund, training trust fund, legal services fund, and annuity fund, and by reimbursing the unit employees for any expenses ensuing from the Respondent's failure to make such payments.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, trust fund statements, and all other documents or records necessary to analyze the amount of fringe

² Because the provisions of employee benefit fund agreements are variable and complex, we leave to the compliance stage the question of whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our make-whole remedy. *Merryweather Optical Co.*, 240 NLRB 12, 13 (1979).

benefit payments due under the terms of this Order.

(c) Post at its facility in Salem, Massachusetts, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

We will not fail or refuse to bargain collectively with Massachusetts Laborers' District Council a/w Laborers' International Union of North America, AFL-CIO, as the exclusive representative of the employees in the appropriate unit described below, by failing and refusing to make any further payments towards the discharge of arrearages in contractually required payments to the health & welfare fund, pension fund, training trust fund, legal services fund, and annuity fund:

All employees of Respondent in the classifications set forth in the 1988-1991 agreement, but excluding all other employees, guards and supervisors as defined in the Act.

We will not in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole our employees in the unit described above by making all further payments towards the discharge of the arrearages in contractually required payments to the health & welfare fund, pension fund, training trust fund, legal services fund, and annuity fund, and by reimbursing the unit employees for any expenses ensuing from our failure to make such payments.

GOUDREAU CORPORATION